

HAMPSHIRE COUNTY COUNCIL

Decision Report

Decision Maker:	Executive Member for Recreation, Heritage, Countryside and Rural Affairs
Date:	19 March 2021
Title:	Fly Grazing Policy
Report From:	Director of Culture, Communities and Business Services

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Purpose of this Report

1. This report consolidates the County Council's approach to the management of fly grazing, both as a land owner and as a statutory body. The report sets out a bespoke policy with the purpose of ensuring best and consistent practices, through clear processes, including protocols and proformas, in order to ensure the most effective outcomes in the management of fly grazing across the county.

Recommendations

2. That the adoption of the fly grazing policy at Appendix 1 is approved.
3. That the procedures for implementing the policy, provided at Appendix 2, are noted and endorsed.

Executive Summary

3. The purpose of this paper is to set out a formal policy for managing fly grazing within the framework of legislation which grants powers to local authorities to detain fly grazed horses.
4. This paper seeks to:
 - Provide a background to the occurrence of fly grazing
 - Sets out the policy and procedures proposed for the management of:
 - Complaints of fly grazed horses
 - Animal welfare, risk and site conditions
 - The service of warning notices
 - Enforcement and removal of horses
 - The consequent care, detention and rehousing of horses
 - Financial considerations

- Recommends that the policy be adopted cross all County Council departments that manage fly grazing.

Fly Grazing

5. Fly grazing is the term applied to horses that are placed on land without permission of the landowner.
6. Fly grazing on land can give rise to issues of public safety, nuisance within the communities affected and impacts on agricultural and environmental land uses, as well as potential animal welfare questions to be addressed.
7. The County Council, as a local authority, has powers under the Animals Act 1971 as amended by the Control of Horses Act 2015. Subject to specific criteria, these powers allow fly grazed horses to be taken into detention, sold, re-homed, or otherwise disposed of, unless a lawful claim is made by their owner within 96 hours of detention.
8. In most circumstances owners recover fly grazed horses from land once a warning notice has been posted and prior to any action to detain has been initiated. However, the purpose of this report is to establish a clear policy and associated procedures for managing the entirety of the process and use of all powers, including detention and disposal of animals.

Responsibilities

9. The landowner has responsibility and the discretion to choose how to manage fly grazing on their land, which may include toleration, but powers to detain fly grazed horses rests with local authorities as defined in legislation.
10. The legislation provides statutory powers for local authorities to remove fly grazed horses, however this is not a statutory duty and as such removal should be implemented when deemed appropriate and taking account of all prevailing circumstances.
11. The use of statutory powers of detention immediately transfers all responsibility for the welfare of the horse to the County Council, together with all associated costs.
12. Within 96 hours of detention the owner may reclaim the horse and the County Council has a duty of care to the owner who may claim damages for any loss or injury during the period of detention.
13. Animal welfare is a critical consideration at every stage and the policy makes explicit reference to ensuring suitable welfare assessments throughout the process and appropriate oversight from specialists, including removal and livery arrangements.
14. If no valid claim to the horse has been made then the ownership of the horse will transfer to the County Council.

Policy and Procedures

15. The policy defines the principles to be adopted when managing fly grazing cases, from initial notification through detention and sale or disposal of a detained horse. The policy is supported by a procedure that sets out the detailed processes to be followed when applying the policy to ensure a consistent and structured approach that is in compliance with the legislation.
16. Following receipt of an initial complaint the policy sets out the requirement for a site visit to assess circumstances, including risk, welfare and hazards, and to record evidence and actions, including photographic records.
17. The procedure includes proforma to prompt the recording of actions and management of health and safety, welfare, hazards and the recording of site specific conditions. Escalation of any issues is provided for within the County Council and to partner organisations and external specialists.
18. The policy outlines the steps to be implemented to initiate removal or detention of fly grazed animals. Initially through the posting of a warning notice on site. Then, if the horse has not been removed from the land, through the formal appointment of specialist horse bailiffs who have the experience and expertise to manage animal removal, carry relevant certification and insurance and have access to appropriate green livery to ensure suitable care of detained animals.
19. A process for appointment is set out in the supporting procedure including the principal considerations in appointing bailiffs and the range of cost elements likely to arise and to be confirmed on appointment.
20. The policy identifies that Formal Notice of Detention must be served and the police notified and clear records of all actions maintained. Standard forms are provided in the procedure and implementation of these formalities is to be strictly agreed with any bailiff company instructed.
21. The policy sets out that the owner may claim the horse within 96 hours of detention, subject to proof of ownership and payment of costs, but if no claim is made ownership of the horse will pass to the County Council, who may thereafter dispose of the horse as deemed appropriate.

Financial Considerations

22. The policy sets out the responsibilities for and approach to costs associated with the management of fly grazed horses.
23. Costs associated with the incursion onto land and any associated or consequent damage, is a matter for the landowner and impacts the County Council only in its role as landowner.
24. Costs associated with the detention and subsequent care of animals will fall to the County Council.
25. Recovery of costs is possible in two ways.
 - First, in the event that an owner claims a horse within 96 hours of detention, one of the conditions of a valid claim is payment for any costs

for damage to the land and property on which the horse was fly grazed, together with all costs associated with the lawful detention of the horse.

- Second, in the event that the horse is not claimed then the ownership transfers to the County Council and any consequent receipt from the sale of the horse will serve to defray costs incurred in the detention of the animal.

26. Maintaining a clear and accurate record of costs is essential to support any claim for costs incurred.

Consultation and Equalities

27. The impact on all communities has been considered in the development of the Policy. The number of fly grazing incidents responded to by the County Council is low, but it is recognised that the Policy may impact on communities that have protected characteristics of race or ethnicity under the Equalities Act, which may include those in the gypsy and traveller community.

28. Any potential disproportionate impact will be mitigated by clear communication of the Policy through relevant channels and the posting of a warning notice prior to detaining a horse to allow the owner to remove the horse and avoid becoming liable for costs incurred where the County Council takes possession of the horse.

Conclusions

29. Fly grazing is a recurrent problem across Hampshire. Whilst the landowner retains responsibility for the land and is the responsible person whilst horses are grazed on their land, the County Council holds the statutory powers to remove fly grazed horses when appropriate.

30. Occurrences of fly grazing give rise to issues of public safety, animal welfare, land management and nuisance.

31. Intervention requires a consistent and structured approach to ensure outcomes that reflect best practice, are practical, sufficiently adaptive, protect the animal's welfare and are in compliance with legislation.

32. The policy presented for approval establishes the principles to be followed to streamline the management of cases from initial notification through to final disposal of detained horses. This is supported by detailed procedures to ensure a structured and consistent approach that is compliant with legislation.

33. The policy enables a pragmatic evidence based approach to managing health and safety, animal welfare, site considerations, legal process and bailiff appointment in order to end the unlawful fly grazing and ensure the best outcome for detained horses.

CORPORATE OR LEGAL INFORMATION:**Links to the Strategic Plan**

Hampshire maintains strong and sustainable economic growth and prosperity:	yes
People in Hampshire live safe, healthy and independent lives:	yes
People in Hampshire enjoy a rich and diverse environment:	no
People in Hampshire enjoy being part of strong, inclusive communities:	no

Section 100 D - Local Government Act 1972 - background documents

The following documents discuss facts or matters on which this report, or an important part of it, is based and have been relied upon to a material extent in the preparation of this report. (NB: the list excludes published works and any documents which disclose exempt or confidential information as defined in the Act.)

DocumentLocation

None

IMPACT ASSESSMENTS:

1. Equality Duty

- The County Council has a duty under Section 149 of the Equality Act 2010 ('the Act') to have due regard in the exercise of its functions to the need to:
- Eliminate discrimination, harassment and victimisation and any other conduct prohibited under the Act;
- Advance equality of opportunity between persons who share a relevant protected characteristic (age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, gender and sexual orientation) and those who do not share it;
- Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

Due regard in this context involves having due regard in particular to:

- a) The need to remove or minimise disadvantages suffered by persons sharing a relevant characteristic connected to that characteristic;
- b) Take steps to meet the needs of persons sharing a relevant protected characteristic different from the needs of persons who do not share it;
- c) Encourage persons sharing a relevant protected characteristic to participate in public life or in any other activity which participation by such persons is disproportionately low.

2. Equalities Impact Assessment:

- 2.1 An Equalities Impact Assessment has been undertaken which identified a potential impact on communities which may have protected characteristics of race or ethnicity under the Equality Act. The published EIA can be accessed via the following link: [Equality analysis | About the Council | Hampshire County Council \(hants.gov.uk\)](#)